

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GÖRAN NILSSON

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Appeal No. 2004-0380  
Application No. 09/092,167

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HEARD: MARCH 2, 2004

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Before GARRIS, OWENS, and TIMM, Administrative Patent Judges.  
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 40-52 as amended subsequent to the final rejection. These are all of the claims remaining in the application.

The subject matter on appeal relates to a process for providing a pasta product which comprises arranging a plurality of frozen pasta product segments in a pan and adding a cooking liquid in the pan with the segments and heating the segments and cooking liquid, wherein the segments are arranged in the pan and

the cooking liquid is added so that individual segments are arranged adjacent one to another segment-side-to-segment-side and so that the cooking liquid is present between adjacent segment sides and so that upon heating the segments and cooking liquid for preparing the segments for consumption, the segments absorb the cooking liquid and the segment sides adjacent one to another tend to join and stick together. This appealed subject matter is adequately illustrated by independent claim 40 which reads as follows:

40. A process for providing a pasta product for consumption comprising obtaining a plurality of individual frozen pasta product segments from a pack, wherein the individual frozen segments comprise three pasta sheet layers and a sauce present between the pasta sheet layers and wherein edges of the pasta sheets define segment sides, arranging the plurality of the obtained segments in a pan and adding a cooking liquid in the pan with the segments and heating the segments and cooking liquid for preparing the segments for consumption, wherein the segments are arranged in the pan and the cooking liquid is added so that individual segments are arranged adjacent one to another segment-side-to-segment-side and so that the cooking liquid is present between adjacent segment sides and so that upon heating the segments and cooking liquid for preparing the segments for consumption, the segments absorb the cooking liquid and the segment sides adjacent one to another tend to join and stick together.

The references set forth below are relied upon by the examiner as evidence of obvious:

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F. Gressette, It's Casserole Time Again Quick and Easy Casseroles Put Convenience In Your Freezer, Miami Herald, Oct. 12, 1989, at 1E.

M. Hanzel, Beach Week Recipes Cater to Children's Tastes, Richmond News Leader (VA), August 15, 1990, at 4.

Korn et al. (Korn), Pasta - The Good Cook Techniques & Recipes, pp. 52-56 (Time-Life Books, Chicago, IL 1980).

All of the appealed claims are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hanzel in view of Korn and further in view of Gressette.

We refer to the brief and reply brief and to the answer for a complete exposition of the contrary viewpoints expressed by the appellant and by the examiner concerning the above noted rejection.

#### OPINION

For the reasons which follow, this rejection cannot be sustained.

On page 5 of the answer, the examiner expresses his basic position as follows:

With respect to claim 40, the recipe disclosed in the article [i.e., the Hanzel article] meets all the claim's limitation[s]. It would have been obvious to one skilled in the art to cook the lasagna segments side-by-side in a cooking liquid because this is a conventional way of heating lasagna as shown by the reference to Korn et al. This is logical reasoning which would have been readily apparent to one skilled in the art.

Contrary to the examiner's aforequoted assertion, Hanzel certainly does not meet all of the limitations of appealed independent claim 40. Rather, this claim unquestionably distinguishes over Hanzel, inter alia, via the here claimed steps of "adding a cooking liquid in the pan with the [individual frozen pasta product] segments and heating the segments and cooking liquid for preparing the segments for consumption" as well as via the here claimed consequences of the steps wherein "the segments absorb the cooking liquid and the segment sides adjacent one to another tend to join and stick together." In fact, none of the applied references contains any teaching or suggestion regarding these cooking liquid features of the independent claim on appeal.

In support of his opposing view, the examiner appears to contend that the applied prior art teaches topping a pasta product with pasta sauce prior to baking, that pasta sauce is tantamount to the appellant's claimed cooking liquid and that the applied prior art would have suggested topping the frozen lasagna segments of Hanzel with a pasta sauce prior to cooking the segments thereby satisfying the requirements of appealed claim 40. The essence of this contention is described on page 7 of the answer with the following language:

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The reference to Korn et al[.] clearly shows how lasagna is prepared for consumption. Even leaving the teaching of the cookbook [i.e., the Korn reference] a side [sic, aside], it is notoriously well known that lasagna is typically consumed with a type of sauce and this is even taught by [sic] in the article by Hanzel. The recipe for lasagna in the article calls for topping with remaining sauce and baking. If one were to freeze the lasagna, it will again be prepared for consumption just the same way as it would be prepared for consumption before freezing. This would have been readily apparent to one skilled in the art in view of the teaching of Korn et al. and what is well known in the art about eating lasagna.

The deficiency of the examiner's position is that, as previously indicated, the applied references contain no teaching or suggestion of topping frozen pasta product, such as lasagna segments, with a sauce prior to heating the frozen pasta product. In each of the respective processes of these references, the sauce is always added to the pasta product before the product is initially heated or cooked. For example, in the process taught by the Hanzel reference, the lasagna ingredients including sauce are combined, then baked, then frozen and then ultimately reheated for consumption. Thus, while this process includes topping the lasagna noodles with pasta sauce, this occurs prior to the aforementioned baking, freezing and reheating steps. It follows that neither Hanzel nor the other applied references would have suggested topping frozen pasta product segments with a pasta sauce prior to heating the segments for consumption.

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Indeed, an artisan plainly would not have been motivated to provide the Hanzel process with such a step in view of the fact that the frozen lasagna segments of Hanzel already include a pasta sauce topping as earlier explained.

Under these circumstances, it is apparent that the examiner has failed to establish a prima facie case of obviousness with respect to the subject matter defined by the independent claim on appeal. For this reason, we cannot sustain the examiner's Section 103 rejection of all appealed claims as being unpatentable over Hanzel in view of Korn and further in view of Gressette.

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The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
TERRY J. OWENS	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
CATHERINE TIMM	)	
Administrative Patent Judge	)	

BRG/hh

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